

**Morales v Shapiro**

2020 NY Slip Op 34894(U)

April 23, 2020

Supreme Court, Westchester County

Docket Number: 51977/2018

Judge: William J. Giacomo

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This opinion is uncorrected and not selected for official publication.

To commence the statutory time period for appeals as of right (CPLR 5513 [a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER  
PRESENT: HON. WILLIAM J. GIACOMO, J.S.C.**

----- X  
AMADO MORALES,  
Plaintiff, Index No. 51977/2018

– against –

**DECISION & ORDER**

RALPH SHAPIRO and NANCY SHAPIRO,  
Defendants.  
----- X

In an action to recover damages for personal injuries, the defendants move for summary judgment dismissing the complaint, pursuant to CPLR 3212:

**Papers Considered**

- 1. Notice of Motion/Affirmation of Jayne F. Monahan, Esq./Exhibits A-G;
- 2. Affirmation of Paul J. Campson, Esq.;
- 3. Reply Affirmation of Jayne F. Monahan, Esq./Exhibit A.

**Factual and Procedural Background**

On September 26, 2015, the plaintiff was allegedly injured while cleaning windows at the home of the defendants. Plaintiff was using an extension ladder and cleaning the exterior windows with a paper towel when the ladder slid to the side causing him to fall.

Plaintiff commenced this action against the defendants asserting causes of action pursuant to Labor Law 200, 240(1), and 241(6), as well as common law negligence.

Defendants move for summary judgment on the grounds that they are not liable under the Labor Law pursuant to the single-family home exemption as they did not supervise or control plaintiff's work. Defendants further argue that washing windows is not a covered activity under the Labor Law.

In opposition, plaintiff argues that window washing is a covered activity and that issues of fact exist as to whether the defendants supervised and controlled his work.

**Discussion**

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The proponent of a motion for summary judgment must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case (see *Winegrad v N.Y. Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]; *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). Failure to make such showing requires denial of the motion, regardless of the sufficiency of the opposing papers (see *Winegrad v N.Y. Univ. Med. Ctr.*, 64 NY2d at 853).

“Once this showing has been made, however, the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action” (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]; see *Zuckerman v City of New York*, 49 NY2d at 562). Mere conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient to defeat a prima facie showing of entitlement to summary judgment (see *Zuckerman v New York*, 49 NY2d at 562).

Labor Law §§ 240(1) and 241(6) provide an exemption from liability for “owners of one and two-family dwellings who contract for but do not direct or control the work.” (see *Campanello v Cinquemani*, 179 AD3d 763 [2d Dept 2020]). In order for owners of one or two-family residential dwellings to be subject to liability under Labor Law §§ 240 or 241, the plaintiff must prove that the owners “directed or controlled” the work being performed (see Labor Law §§ 240, 241; *Spinillo v Strober Long Is. Bldg. Material Ctrs.*, 192 AD2d 515, 516 [2d Dept 1993]). The phrase “direct or control” is construed strictly and refers to the situation where the “owner supervises the method and manner of the work” (*Rimoldi v Schanzer*, 147 AD2d 541, 545 [2d Dept 1989]).

The evidence demonstrates that plaintiff had been performing odd jobs during the summers at the defendants’ home for approximately 15 years. On the date of the accident, defendants called plaintiff to wash the exterior windows of the house. Plaintiff did not have any tools. Defendant Nancy Shapiro was home when plaintiff arrived at the home. She and plaintiff went to a neighbor’s house to borrow a ladder. Plaintiff was using the extension ladder washing the exterior windows on the front of the house when the ladder slid causing him to fall to the ground. Neither of the defendants witnessed the accident.

The defendants demonstrated that the work was being performed at their single-family residence and they did not direct or control the plaintiff’s work (see *Alexandridis v Van Gogh Contr. Co.*, \_\_\_AD3d\_\_\_, 2020 NY Slip Op 01314 [2d Dept February 26, 2020]). Any monitoring of the progress of the work, approval of the aesthetics of the work, or overseeing of the work’s general quality “reflects typical homeowner interest in the ongoing progress of the work and does not constitute the kind of direction or control necessary to overcome the homeowner’s exemption from liability” (*Chowdhury v Rodriguez*, 57 AD3d 121, 127 [2d Dept 2008] [holding that even assuming the defendants loaned the short ladder to the plaintiff, it was not equivalent to directing or controlling the work and could not serve as a predicate for liability outside of the

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homeowners' exemption]; see *Campanello v Cinquemani*, 179 AD3d 763 [holding that the defendant's activities in visiting the work site, providing plans for the area to be worked on, making general decisions, and reviewing the progress of the work were not any more extensive than what would be expected of an ordinary homeowner]). In opposition to the defendants' prima facie showing, the plaintiff failed to raise a triable issue of fact (see *Lombardi v City of New York*, 175 AD3d 1521 [2d Dept 2019]).

Labor Law § 200 is a codification of the common-law duty of an owner or general contractor to provide workers with a safe place to work (see *Ortega v Puccia*, 57 AD3d 54, 60 [2d Dept 2008]). "Cases involving Labor Law § 200 fall into two broad categories: namely, those where workers are injured as a result of dangerous or defective premises conditions at a work site, and those involving the manner in which the work is performed" (*Ortega v Puccia*, 57 AD3d at 61).

Liability in common-law negligence and under Labor Law § 200 in cases involving an allegedly dangerous premises condition is established only if the owner or general contractor had control over the work site and either created the dangerous condition or had actual or constructive notice of it (see *Mendez v Vardaris Tech, Inc.*, 173 AD3d 1004, 1005 [2d Dept 2019]; *Doto v Astoria Energy II, LLC*, 129 AD3d 660, 663 [2d Dept 2015]). "When a claim arises out of alleged defects or dangers in the methods or materials of the work, recovery against the owner or general contractor cannot be had under Labor Law § 200 unless it is shown that the party to be charged had the authority to supervise or control the performance of the work" (*Ortega v Puccia*, 57 AD3d at 61).

Here, the defendants established, prima facie, that they did not create or have actual or constructive notice of any dangerous condition (see *Mendez v Vardaris Tech, Inc.*, 173 AD3d 1004, 1005 [2d Dept 2019]). The plaintiff did not allege that the ladder was dangerous or defective. Moreover, as set forth above, the defendants established, prima facie, that they did not supervise or control the performance of the work (see *Campanello v Cinquemani*, 179 AD3d 763; *McFadden v Lee*, 62 AD3d 966, 967 [2d Dept 2009]). "Evidence of mere general supervisory authority to oversee the progress of the work, to inspect the work product, and/or to make aesthetic decisions is insufficient to impose liability under Labor Law § 200" (*id.* at 967). In opposition, the plaintiff failed to raise a triable issue of fact (see *Davies v Simon Prop. Group, Inc.*, 174 AD3d 850, 855 [2d Dept 2019]).

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Accordingly, it is

**ORDERED** that the defendants' motion for summary judgment dismissing the complaint is **GRANTED** and the complaint is dismissed.

Dated: White Plains, New York  
April 23, 2020



A handwritten signature in black ink, appearing to read "William J. Giacomo", is written over a horizontal line.

HON. WILLIAM J. GIACOMO, J.S.C.

H: ALPHABETICAL MASTER LIST – WESTCHESTER/Morales v. Shapiro